

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3534 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PUSHKERBHAI V JOSHIPURA

Versus

STATE OF GUJARAT

Appearance:

Mr M.D. Rana, learned Advocate for the Petitioners.

Mr Desai with Mr Doshit, learned Advocate for the Respondent.

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 14/08/96

ORAL JUDGEMENT

By filing this petition under Article 226 of the Constitution of India, the petitioner has prayed for "a writ of certiorari or any other appropriate writ, order or direction to quash and set aside the impugned action of the Government/Respondent denying the benefits to the petitioner about the deemed date as Sub Treasury Officer from 1.5.1965 and the refusal to grant the revised pay and grade I service and has also prayed for other relief.

2. Succinctly stated, the facts leading to the present proceeding are as under :

The petitioner was appointed as a Junior Clerk in 1931 in the office of the Chief Accounts and Finance of the State of Junagadh. On 1.11.1956 there was a merger of State of Junagadh with the then State of Saurashtra. Thereafter, on reorganisation of the State, the petitioner's services were in the Bombay State and on bifurcation of bilingual State of Bombay, the petitioner was serving in the State of Gujarat. It appears that the District Treasury Office was in existence when the petitioner was appointed as Sub Treasury officer on 30.11.1963.

It is averred by the petitioner that the petitioner passed accounts examination when he was serving in Junagadh State. The petitioner attained the age of 45 years on 22.12.1954 and thereafter, was to be superannuated on 30.12.1967 as a Sub Treasury Officer. When the petitioner was serving as Sub-Treasury Officer, Rules known as the "Gujarat Subordinate Accounts Service Departmental Examination Rules, 1964" (hereinafter referred to as "the Rules") were introduced and were made applicable from 1.5.1965. It is contended by the petitioner that as per Rule 4, he should have been given the benefit as it was not compulsory for him to pass the examination. The petitioner was reverted while he was on preparatory leave, and ultimately, under protest he was permitted to retire on 30.4.1967 before the date of superannuation.

The petitioner has submitted that under the said Rules, in all 70 persons were given benefit as on 1.5.1965, they attained age of 45 years, and were exempted from appearing at the examination. Annexure 'A' to the petition is the office order dated 4.10.1982 granting exemption to seventy employees who have attained the age of 45 years. The name of the petitioner was not included in the said list, and, therefore, the petitioner submitted an application dated 18th February 1984, vide Annexure 'B' and made a grievance that he should also have been given the benefit of deemed date of promotion. His grievance was that he was neither being put in Group II in the revised list, nor is he promoted to Group I. Vide annexure 'C' dated 24.1.1984, by an office order, persons indicated in the list were declared as entitled to promotion to group I from group II. It was also pointed out that they will be paid salary provided they have actually worked, otherwise, the same will be considered as notional benefit and from the date on which

they have actually worked, benefit will be given. List of the persons is not annexed by the petitioner. It appears that in response to letter dated 18.2.1994 at Annexure 'B' to the petition, the petitioner was informed by letter dated 2.3.1984 at annexure 'D' that his case will be considered after confidential reports are received from the Treasury Officer, Junagadh. On 12.3.1984, vide annexure 'E', the petitioner has again forwarded his representation for which reply, vide Annexure 'F', was given, again informing the petitioner that after receipt of confidential reports, the case of the petitioner along with other similar cases will be considered. The petitioner again wrote another letter on 12.6.1984. It appears that during the pendency of the petition, by office order dated 29.7.1985 at Annexure 'H', some persons were promoted to Group I and Group II. So far as the petitioner is concerned, his name is indicated at Sl. No.4. It is also mentioned in the said order that all the four persons named in the order have retired and the promotion, therefore, is notional. However, if they have actually worked, then in that case, the difference of salary will be paid. Thus, the petitioner was given benefit of a notification dated 4.4.1964 issued in exercise of the powers conferred by provision to Article 209 of the Constitution. By that notification, the Government of Gujarat, in supersession of the recruitments rules which were in existence, prescribed the rules for recruitment to various posts in the Directorate of Accounts and Treasuries. Reading the notification, it appears that Sub-Treasury Officers were included in Group II.

Learned advocate appearing for the petitioner has drawn the attention of the Court to Annexure 'H' dated 29.7.1985 and has emphasised that the petitioner should have been promoted to Group I and should have been given the scale of Group I, as has been given in case of other persons, since he has retired. The petitioner has annexed at Annexure I to the petition, an office order dated 24.1.1984, which is a xerox copy and not a certified copy. However, at the time of hearing, learned advocate for the petitioner has produced the original and it is contended that as other persons are given deemed date, notional benefit ought to have been given and he is claiming only that and he cannot claim actual benefit as such in group I.

Learned advocate for the petitioner relied on the judgement of this Court (Coram: B.K. Mehta, J.) in the case of C.H. Padshah vs. P.V. Bhavsar in Spl. C.A. No. 117 of 1972 decided on 23.12.1976 and submitted that the

petitioner should have been given the benefit.

In the instant case, the relevant Rules are required to be considered. By the aforesaid notification dated 4.4.1964 being No. GN/36/TSM/2063/225/GH, recruitment rules are prescribed for various posts in the Directorate of Accounts and Treasuries and for the purpose of this Rules, the posts are grouped in four groups. Group I is of Senior Auditors in Local Departments, Inspectors of Stores Verification Organisation, Superintendents in various Branches in the Directorate and Head Accountant in Treasuries. Group II consists of Inspectors, Accountants and Noting Assistants in Insurance Branch, Sub Treasury Officer and Deputy Accountants in Treasuries. Group III and Group IV are not relevant in the instant case, and therefore, the same are not considered. Rule 3 relates to recruitment rules for the posts included in Group-I, which reads as under:-

3. Recruitment Rules for the posts included
in Group-I appointment shall be made:

- (i). by nomination from among the candidates
who
- (i). Unless already in Government service are
not below 21 years and above 25 years of
age, and
- (ii) Are Second Class graduates of recognised
University preferably in Commerce with
Accountancy and Audit as special
subject.

Provided that qualifications being equal,
preference will be given to the candidates with
not less than 3 years experience in Accounts in
any Government Department or Firms or under Local
Authority.

- (a). The upper age limit may be relaxed to 30
years in case of Schedule Caste and Scheduled
Tribes.
- (b). The candidates selected by nomination
shall be on probation for 2 years and will be
required to pass the Departmental examination for
appointment to supervisory posts within the
period of probation and within 2 chances. In the
event of his failure to pass the examination
within the prescribed period and chances,
Government may at its discretion terminate the
services of a candidate or deal with him in such

manner as deemed fit.

(c). The candidates selected by nomination will be required to pass an examination in Hindi and in a regional language according to the prescribed rules unless they have passed such an examination.

(ii). by promotion of persons holding the posts in Group-II who have passed the qualifying examination prescribed by Government provided that Seniority itself shall not constitute a group for promotion.

The promotion of promotees to Direct Recruits shall be 3.1.

Thus as per sub-rule 3, persons who are holding post in group II could be promoted to group I. Rule 4 refers to recruitment rules for the post included in group II.

Mr. Rana, learned advocate submitted that the petitioner was working as Sub-Treasury Officer since 30.11.1963 and he should have been given the benefit of the scale which is being given to Group I. In view of the Recruitment Rules, from the date on which the Rules came into force, the persons are to be considered as provided under the Rules. It is not an automatic process that because a person working in Group II has completed the age of 45 years, he should be straight away put in group I. If the person in group II though not qualified but eligible as per the rules and if there is a vacancy and if juniors to the petitioner is appointed who is similarly situated, then the petitioner may make a grievance.

So far as examination rules are concerned, rule 3 is relevant, which reads as under :-

"3. No person will be eligible for appointment to any of the Supervisory posts listed in statement I to these rules unless he has passed the departmental examination or has been exempted from passing the same provided that the exemption will not be effective for further promotion and the officers will have to pass the examination before they can be considered for higher posts."

Reading this Rule, it is very clear that no

person would be eligible for appointment to any of the supervisory post listed in Statement I which has been referred to earlier. The petitioner was in group II of statement. As per the rule, unless he is exempted, he has to pass the examination. Rule 4 provides for an exemption.

"4. A person who has continuously officiated for a period of 5 years or has been confirmed in any of the Supervisory posts referred to in rule 3 above or has already attained the age of 45 years prior to the coming into force of these rules will be exempted from passing the examination provided that the exemption will not be effective for any further promotion and the officers will have to pass the Examination before they can be considered for higher posts."

Thus, as per the Rule eligibility criteria is prescribed. Therefore, a person who is qualified or in service and has passed the examination as per the rules or if he is exempted from appearing at the examination, then he is entitled to be held as eligible. But what the petitioner states is that he should be given the benefit of group I. Learned advocate Mr. Rana could not point out that similarly situated persons are given benefits. It is not the case of the petitioner that when he was in service, there was a vacancy in Group I at that time and persons junior to him and though not qualified but eligible have been promoted to Group I. Thus, in substance, the say of the petitioner is that merely because he has attained the age of 45 when the Rules came into force, he should be given the scale of Group 1. This contention is without any basis, and therefore, the same cannot be accepted. Even if there was a vacancy in Group 1, then for promotion to Group 1, rules are required to be followed. Merely because one is exempted from passing the examination does not mean that he is to be promoted. Promotion of promotees holding posts in Group II must be as per Rule 3 (c)(ii). It is not the case of the petitioner that without following procedure others are given benefit. The petitioner could not have been promoted bypassing the rules.

In the result, this petition stands rejected.
Rule discharged. No order as to costs.

csm./